

FCC MAIL SECTION

Federal Communications Commission

DA 97-2238

OCT 25 10 18 AM '97

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Everglades City, LaBelle, Estero
and Key West, Florida)¹

)
)
)
) MM Docket No. 97-116
) RM-9050
) RM-9123
)
)

ORDER TO SHOW CAUSE**Adopted: October 15, 1997****Released: October 24, 1997****Comment Date: December 15, 1997**

By the Chief, Allocations Branch

1. The Commission issued a Notice of Proposed Rule Making ("Notice"), 12 FCC Rcd 4212 (1997), proposing the allotment of Channel 224A at Everglades City, Florida, in response to a petition filed by Keith L. Reising ("Reising").
2. In response to the Notice, InterMart Broadcasting West Coast, Inc. ("InterMart") filed a counterproposal and request for an order to show cause.² Therein, InterMart requested the deletion of Channel 224C3 at LaBell, Florida, reallocation of the channel to Estero, Florida, and modification of the license for Station WKZY to specify Estero as the community of license. To accommodate its proposed change of community, InterMart also requests the substitution of Channel 224C1 for Channel 223C1 at Key West, Florida, and modification of the license for Station WEOW accordingly.
3. In order to proceed with our analysis of the requested allotments in this proceeding, it is necessary to issue an Order to Show Cause to Station WEOW, Key West, Florida, why its license should not be modified to specify operation on Channel 224C1 in lieu of its present Channel 223C1. InterMart has stated its willingness to reimburse the licensee of Station WEOW for its reasonable costs incurred with making the channel change in accordance with Circleville, Ohio, 8 FCC Rcd 159 (1967). We will not accept any additional counterproposals because an

¹ The communities of LaBelle, Estero and Key West have been added to the caption.

² The counterproposal was put on public notice on July 10, 1997, Report No. 2211.

opportunity has already been provided for the filing of such proposals. Further, although this Order affords Station WEOW an opportunity to object to the proposed channel change, it does not afford an additional opportunity to comment on the merits of the proposals set forth in the Notice or the proposal advanced in InterMart's counterproposal. See Angola, Indiana, et al., 5 FCC Rcd 2000 (1990).

4. Channel 224C1 can be allotted to Key West, Florida, in compliance with the Commission's minimum distance separation requirements at Station WEOW's presently licensed transmitter site.³

5. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Spectrum Radio, Inc., licensee of Station WEOW, Key West, Florida, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 224C1 as proposed herein instead of the present Channel 223C1.

6. Pursuant to Section 1.87 of the Commission's Rules, Spectrum Radio, Inc., may not later than December 15, 1997, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on Spectrum Radio, Inc. to furnish additional information. If Spectrum Radio, Inc. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Spectrum Radio, Inc. will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary SHALL SEND BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Order to Show Cause to the licensee of Station WEOW as follows:

Spectrum Radio, Inc.
1107 Key Plaza, Suite 332
Key West, Florida 33041

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

³ The coordinates for Channel 224C1 at Key West, Florida, are 24-40-35 and 81-30-41.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau